IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.08.2006
Coram:
The Hon'ble Mr.Justice P.K.MISRA
and
The Hon'ble Mr. Justice M.JAICHANDREN

Writ Appeal No.448 of 2001 and
W.P.Nos.27364 to 27367 of 2005, 22011 of 2004 and 4701 of 2002, and
WPMP Nos.29789 to 29792 of 2005, 26612 of 2004, 6619 of 2004 and
WVMP.351 of 2002

Writ Appeal No.448 of 2001:

Ragas Educational Society,
116, Dr.Radhakrishnan Salai,
Chennai - 600 004,
rep.by its
Secretary Dr.R.Gunaseelan ..... Appellant

vs.

1) Union of India represented by
Secretary to Government of India,
Ministry of Health and Family,
Welfare, Department of Health,
Nirman Bhavan, New Delhi.

2) Dental Council of India,
rep.by its Secretary,
Temple Lane Kotla Road,
New Delhi. .... Respondents

WRIT APPEAL filed under Clause 15 of Letters Patent Appeal against the order dated 18.01.2001 passed by the learned single Judge in W.P.No.10655 of 1999.

WP NO. 10655/99 filed under article 226 of Constitution of India to issue a writ of certiorarified Mandamus calling for the records comprised in the proceedings of first Respondent dated 22/7/1998 in Lr. No. V. 12017/33/97 PMS and quash the same in so far as it reduced the annual intake from 6 to 4 students and consequently direct the Respondents to restore the admission of students in the MDS programme in Orthodontics to six in the light of the Communication of the first respondent dated 09/09/1997 in Lr. No. V 12017/22/94/PMS to enable all the students admitted from 1995-96 to pursue the courses, take up examination and complete the course to obtain the prescribed qualification.

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1. Dr. G.M. Vijay Shankar — in W.P.No.27364/05
2. Dr. George Jose Cherackal — in W.P.No.27365/05
3. Dr. B. Mallikarjun Reddy — in W.P. No.27366/05
4. Dr. G. Vijay Anand — in W.P.No.27367/05

5. Dr. T. Saravanamumar
   Dr. O.M. Kavitha
   Dr. B. Saravanan
   Dr. M. Premalatha — in W.P.22011/04

6. Ragas Dental College
and Hospital
2/102 East Coast Road,
Uthandi, Chennai
rep by Dr. R. Gunaseelan .. in W.P.No.4701/02

VS

1. The Tamilnadu
Dr. M.G.R. Medical University
Chennai represented by its Registrar,
No. 40 Anna Salai, Chennai- 600 032. .. in all Wp Nos. 27364 to 27367/05 W.P.22011/04 4701/02

2.Ragas Dental College
and Hospital
represented by its Principal
2/102 East Coast Road,
Uthandi, Chennai.119 .. in all WP Nos.27364 to 27367/05 W.P.22011/04

WP NOS. 27364 to 27367/05, 22011/2004 filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the Respondents herein to register the petitioner as lawfully admitted student for the M.D.S. (Orthodantics) course from the academic year 2003-2004 thereby allowing him to complete the course by permitting him to undertake all the examinations and issue decree certificate.

WP No.4701/02 : Filed under Article 226 of constitution of India to issue a writ of Certiorarified Mandamus calling for the records comprised in the proceedings of the respondent dt. 28.1.2002 in Lr.No.Affln.I (2)/9152 (I)/94 and quash the same in so far as it relates to adjustment of two seats in M.D.S. (Orthodontics) course for the Academic Years 2002-2003 and 2003-2004 and consequently direct the respondents to grant affiliation as per the sanctioned strength fixed by the Dental Council/Central Government for the said years without any reduction or adjustment.

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For Appellant in W.A.No. 448 of 2001 : Mr.K.Duraisamy, Sr. Advocate, for Kandavadivel Doraisamy

For Respondents in W.A.No.448 of 2001 : Ms.P.Buvaneswari for R1
Mr.Perumbulavil Radhakrishnan for R2

COMMON JUDGMENT

(Judgment of the Court was delivered by P.K.MISRA,J)

Heard the respective learned counsel appearing for the parties.

The facts necessary for appreciation of the questions raised in this writ appeal No.448 of 2001 and the writ petitions are as follows:-

On 27.04.1995, the State Government issued an Essentiality Certificate for M.D.S.(Orthodontics) Course in Ragas Dental College and Hospital and subsequently, on 12.06.1995, Tamil Nadu Dr.M.G.R.Medical University granted No Objection Certificate for Orthodontics Course. On 23.04.1996, Central Government granted permission for admission of four students in Orthodontics Course. Subsequently, on 09.09.1997, the Government of India increased the intake from four to six students. According to the Dental Council of India, such increase had been made by the Government of India without properly consulting the Dental Council of India. Be that as it may, the institution had admitted six students for the year 1997-1998 and six students for the year 1998-1999. The six students for the year 1998-1999 had been admitted by 01.04.1998. However, on 22.07.1998, the Government of India reduced the intake from six to four. At that stage, the institution gave a representation indicating that since the students had already been admitted, the intake of students should not be reduced. Eventhough no specific permission had been received, on 01.04.1999, the institution admitted six students for the academic year 1999-2000 and thereafter, on 18.5.1999, made a further representation to the Union Council of India/Government of India. At that stage, the institution filed W.P.No.10655 of 1999 challenging the order dated 22.07.1998 under which the Central Government had reduced the intake of students from six to four. Such writ petition was dismissed by a learned single Judge of this Court by order dated 18.01.2001. The present writ appeal No.448 of 2001 is filed against such decision of the learned single Judge. While the matter stood thus, on 28.01.2002, Tamil Nadu Dr.M.G.R.Medical University passed orders indicating that excess admission had been made during the years 1998-1999, 1999-2000 and therefore, such excess admission should be

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adjusted against the admission to be made during the year 2002-2003 and 2003-2004. In the mean time, on 07.02.2002, the Government of India granted permission for increasing the intake from four to eight seats with effect from the academic session of 2002-2003. Thereafter, the institution filed W.P.No.4701 of 2002, challenging the order dated 28.01.2002 which had been issued by the University. In such writ petition, an order of interim stay was passed. Thereafter, on the basis of such interim order of stay, the institution admitted eight students for the academic session 2002-2003 and similarly for the academic session 2003-2004, it admitted eight students. Incidentally, it has been pointed out by the respondent that in each year, a batch of four students had been sponsored by the Government towards the Government quota. The students who had taken admission during the academic year 2002-2003 completed their course in 2005 and have appeared at the examination and completed their course and the successful candidates have been awarded the appropriate degrees. The students who had taken admission during the year 2003-2004 have completed their three years' course and by virtue of the interim direction of this Court. However, it is apparent that the results of such examination of the year 2006 have not been published may be, because while giving permission the High Court had indicated that the result of the final examination should not be published. Be that as it may, the students have filed W.P.No. 22011 of 2004 and W.P.Nos.27364 to 27367 of 2005-the writ petitions for permitting the students to complete the formalities and to allow them to complete the course and to obtain degrees, if successful.

2. Separate counter affidavits have been filed by the University and the Dental Council of India to the effect that the institution had illegally admitted excess students during the years 1998-1999 and 1999-2000 and therefore, the University had issued the order dated 18.01.2001 directing the institution to adjust such excess admission against the students available for the years 2002-2003 and 2003-2004 and since the students had already been admitted in excess, the institution is required to identify the students who had been admitted in excess, so that such of those students are not eligible should discontinue the course.

3. In the above back ground, it is necessary to notice the contentions raised by the students before taking up other related issues. It is contended by the students that by the time they sought admission, the Government of India had increased the intake capacity from four to eight and at any rate, 50% students were sponsored by the Government and as such, the mistake is not of the students and the students were not to be blamed for any mistake committed by the management during the earlier years, and since they have completed the course in full, it would not be proper to deprive the students of their career by not

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permitting such students to complete the course.

4. It is apparent that the Government of India had granted permission for increasing the intake capacity from four to eight. It is, of course, true that the Dental Council of India raised certain objections regarding the initial increase of intake from 4 to 6 by contending that the Dental Council of India had not been properly consulted. However, that was a matter between the Union of India and Dental Council of India. At any rate, the increase in seats from four to eight, by the order dated 07.02.2002, was after consultation with the Dental Council of India. However, the University had already written to the management to adjust the excess admission made during the years 1998-1999 and 1999-2000 against the intake capacity of 2002-2003 and 2003-2004. In normal course, the management was expected to follow such direction issued by the University. But, after such direction from the University and the Government of India, the University had increased the intake from four to eight and thereafter in W.P.No.4701 of 2002, an interim order was passed by this Court. In the above background, it is obvious that the students were not at all at fault. Therefore, it would not be proper nor in the interest of justice, to penalise the students. The prayer of the students for issuing a direction to the University to permit them to complete the course, to appear at the examination and to publish the results, is just and proper, in the facts and circumstances and accordingly a direction should be issued.

5. The learned counsels appearing for the contesting respondents namely the University, the Union of India and Dental Council of India have submitted that such types of transgression by managements have become quite common and therefore, the Management should be taken to task for having transgressed and having admitted the students in excess of the sanctioned permission. So far as this aspect is concerned, it appears that the management had admitted students in April,1998, whereas the Government of India reduced the intake from six to four only on 22.07.1998. Therefore, by that time, the students had already been admitted. Since the intake of the year 1998 had been reduced, the management should have also tried to adjust excess students against the subsequent years. In other words, there was an excess admission of four students and the University had issued a direction for adjustment of six students in the years 2002-2003 & 2003-2004 batch. Since the primary fault was that of the management, it is obvious that it should not be allowed to reap the benefits of such irregular action. However, in view of the fact that since the excess admission had taken place during the years 1998-1999, 1999-2000 and those students have already completed and left the institution, the management can be justifiably asked to refund the fees paid by the students so that it cannot be ensured that management does not take any undue advantage.

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6. In fact, the learned counsel appearing for management has submitted that adopting such a course would be just and proper. The learned counsel appearing for the University, however, submitted that atleast for the coming years, that is to say 2007-2008 and 2008-2009, such excess seats should be adjusted by reducing the seats.

7. After careful consideration of the various submissions made by the learned counsel, we feel that it may not be appropriate to reduce the seats during the future years. The course offered by the institution is M.D.S (Orthodontics) Course and the seats are limited. There cannot be any denying of the fact that for such specialised course, there is always a great demand among the students' community and if the seats in future are reduced inspite of the fact that necessary infrastructure is available, the wider interest of the society would be affected. Taking note of this aspect, we feel that instead of directing reduction of seats for the future two years, the management should not be allowed to reap the benefit and should be directed to pay for the mistakes committed by the management.

8. It is not disputed at the bar that the admission fee during relevant year was Rs.1,50,000/- . The public authority such as Union of India and the Dental Council of India had to face litigation, due to the mistake of the management for which they will have to be reimbursed. Having regarding to all the aspects, we feel that the management should be required to pay at the rate of Rs.3/- Lakhs for each excess student, that is to say Rs.12/- Lakhs in all. Such amount is to be paid to the University, the Union of India and the Dental Council in equal proportion. This amount is payable towards refund of fees, penalty as well as cost of the litigations. This amount should be paid within a period of eight weeks from the date of receipt of a copy of this order.

The writ appeal and the writ petitions are disposed of accordingly. No costs. Consequently, connected WPMPs and WVMP are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1) The Secretary to Government of India,
The Union of India ,
Ministry of Health and Family,
Welfare, Department of Health,
Nirman Bhavan, New Delhi.

2) The Secretary,
Dental Council of India,
Temple Land Kotla Road,
New Delhi.

3. The Registrar
The Tamil Nadu Dr. M.G.R. Medical University
No. 40, Anna salai, Chennai 600 032

4. The Principal
Ragas Dental College and Hospital
No. 2/102 East coast Road,Uthandi, Chennai.

+ 2 ccs to M/s. Muthumani Doraisamy, Advocate sr no. 35008 and 35007)
+ one cc to Perumbulavil Radhakrishnan Advocate sr no. 34931
+ one cc to Mrs. Buvaneswari, SCCG SR NO. 34949
+ one cc to Mr. R. Sureshkumar, Advocate sr no. 34899

TEJ, SGL(CO)
NM, KK, KM(17.08.2006)
Compared by
SV/KB

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